



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,137	04/04/2006	Rudolf Fiegler	30071/41415	7719
4743 7590 11/04/2008 MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606			EXAMINER NICHOLSON III, LESLIE AUGUST	
			ART UNIT 3651	PAPER NUMBER
			MAIL DATE 11/04/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/544,137

**Applicant(s)**

FIEGLER, RUDOLF

**Examiner**

LESLIE A. NICHOLSON III

**Art Unit**

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 10/26/2008 have been fully considered.

Due to Applicant's arguments and/or amendments, all previous rejections of claims 1-5 over Grilliat are hereby withdrawn.

Applicant's arguments of claims 6-16 over Grilliat are not persuasive. Applicant argues a person having ordinary skill in the art would understand that a multiple through-passage section defines a section of the rotating conveyor where objects pass through multiple times during normal operation. In response, conveyor 7 defines a section (the area around conveyor 7) where objects pass through multiple times during normal operation. Applicant argues transfer starwheel 7 is not part of the carousel 5. In response, the Examiner would agree that the starwheel and carousel are not the same part, however, starwheel 7 meets all the limitations of the claimed rotating conveyor.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the containers" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

***Allowable Subject Matter***

4. Claims 1-5 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 6,9-11,13 are rejected under 35 U.S.C. 102(b) as being anticipated by Grilliat FR 2,576,003 A1.

Grilliat discloses a device and process for the handling of objects, comprising a rotating conveyor (7) provided with conveying stations (a,b,n), on which an intake station (4) and a discharge station (6) are arranged, a section of the rotating conveyor being designed as a multiple through-passage section (the same object may be conveyed by the rotating conveyor at least once) in the direction of transport between the intake (4) and the discharge stations (6), the rotating conveyor is designed in such a manner that it conveys the objects first past the discharge station and back to the intake station (at least abstract), wherein the multiple through-passage section has a length

that corresponds to less than half the number of conveying stations of the rotating conveyor (3, see Figure 1), wherein the discharge station (6) is in the direction of transport, positioned behind the intake station (4) and directly adjacent to the intake station (4), and a processing device (abstract) for the containers is positioned in the multiple through-passage section, wherein the intake station (4) has an intake star wheel, an intake star wheel (4) supplied by a helical separating unit (11), a carousel (3) with an odd number of conveying stations, a discharge star wheel (6), whereby the discharge star wheel (6) is positioned, in the direction of transport, adjacent to the intake star wheel (4), whereby a double through-passage section (area around 7) the active conveying stations of which have double the spacing distance of the conveying stations of the rotating conveyor (see Figure 1).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7,8,14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grilliat FR 2,576,003 A1.

Grilliat as disclosed above, fails to show wherein only every second conveying station of the rotating conveyors available upon one rotation of the rotating conveyor

through the intake station, and only every second conveying station of the rotating conveyor, displaced relative to the intake station by one conveying station, can be emptied by the discharge station, wherein the rotating conveyor has an odd number of conveying stations.

However, it would be obvious to one having ordinary skill in the art at the time the invention was made to modify the process by which conveying stations interact with the intake and discharge stations, the number of conveying stations and the number of conveying stations depending on the user's needs and requirements.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grilliat FR 2,576,003 A1 in view of Humele USP 6,520,318.

Grilliat, as disclosed above, fails to show a testing device for the repeated, temporally spaced determination of parameters.

Humele does disclose a testing device (sensor 39) for the repeated, temporally spaced determination of parameters.

It would be obvious to one having ordinary skill in the art at the time the invention was made to add Humele's sensor to Grilliat's invention in order to provide for article presence, counting, label reading etc.

**Conclusion**

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LESLIE A. NICHOLSON III whose telephone number is (571)272-5487. The examiner can normally be reached on M-F, 8:30 AM - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on 571-272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gene Crawford/  
Supervisory Patent Examiner, Art  
Unit 3651

/L. A. N./  
Examiner, Art Unit 3651  
10/29/2008